IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Santosh. Versus State of Rajasthan & Anr.

S.B. Criminal Misc. Petition No. 134/2006
against the order dated 21-10-2005 passed
by the Additional Sessions Judge, Rajgarh,
district Churu, in Cri. Revision No.14/2002.

...

Date of Order: September 12, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. N.L. Joshi, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

By the instant criminal miscellaneous petition under Section 482 Cr.P.C., the petitioner has assailed the order dated 21-10-2005 passed by the Additional Sessions Judge, Rajgarh, district Churu (for short, "the Revisional Court" hereinafter) in Criminal Revision No. 14/2002, whereby the revision petition filed by the petitioner against the order dated 14-12-2001 passed by the Judicial Magistrate, Rajgarh, district Churu (for short, "the trial Court" hereinafter), was dismissed.

I have heard learned counsel for the petitioner and the Public Prosecutor for the State. Carefully perused the orders passed by the trial Court as well as the Revisional Court.

It is contended by the learned counsel for the petitioner that the complainant is cousin of the petitioner and in order to grab the property of petitioner's father, who has no male issue, revenue suits have been filed by the complainant party and they are harbouring malice against the petitioner and, therefore, a false complaint has been filed against the petitioner. It is further contended that after investigation, the police filed the negative final report, but the trial Court took cognizance on a protest petition filed by the complainant.

In Jagdish Ram Vs. State of Rajasthan, AIR 2004 SC 1734, the Hon'ble Supreme Court held that at the stage of taking cognizance, the Magistrate has only to decide whether sufficient ground exists or not for further proceeding in the matter. It is well settled that notwithstanding the opinion of the police, a Magistrate is empowered to take cognizance if the material on record makes out a case for the said purpose. The Apex Court further held that investigation is the exclusive domain of the police and taking cognizance of the offence is an area exclusively within the domain of a Magistrate. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding, and not whether there is sufficient ground for

conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of taking cognizance and issuing the process to the accused, the Magistrate is not required to record reasons.

From a perusal of the order passed by the trial Court, it appears that the trial Court, after considering the statements of complainant PW 1 Kurda Ram, injured Balvaan, Prabhu Ram, Antar Singh and Satveer etc., came to the conclusion that prima facie there is evidence against the petitioner and other co-accused for proceeding against them for the offences under Section 448 and 323/34 IPC. The Revisional Court, relying on the statements of aforesaid witnesses, affirmed the finding arrived at by the trial Court. Both the Courts below found prima facie case against the petitioner for the offences noticed above.

The criminal miscellaneous petition is, therefore, dismissed. The stay petition also stands dismissed.

(H.R. PANWAR), J.

gandhi/mcs